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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)	
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Filing Date: November 10, 2022)	Case No.: PSH-23-0027
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Issued: April 10, 2023

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's security clearance should not be restored.

I. Background

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. On February 5, 2022, the Individual reported on his Electronic Questionnaire for Investigations Processing (eQIP) that he had failed to file state and federal taxes in 2014, 2015, 2016, 2017, 2018, 2019, and 2020. Exhibit (Ex.) 5 at 31–34. The Individual was then asked to complete a Triggered Enhanced Subject Interview (TESI), where he verified the information provided in his eQIP and told the investigator that the U.S. Internal Revenue Service (IRS) and his state of residence filed his taxes for him each year even though he was not involved in their preparation. Ex. 6 at 3. In April of 2022, the LSO provided the Individual with a Personnel Security Questionnaire to complete. Ex. 3.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created substantial doubt regarding his continued eligibility to hold a

¹ The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

security clearance. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Adjudicative Guidelines. Ex. 2. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. The Individual submitted one exhibit into the record (Ex. A) and presented his own testimony.² The DOE Counsel submitted nine numbered exhibits (Exs. 1 through 9) into the record.

II. Notification Letter and Associated Security Concerns

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. Ex. 2. That information pertains to Guideline F and Guideline E of the Adjudicative Guidelines. Ex. 2. Under Guideline F (Financial Considerations), “[f]ailure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 18. Guideline E addresses “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 15.

As a basis for citing Guideline F and Guideline E, the LSO cited the Individual’s repeated failure to file state and federal taxes. The derogatory information cited by the LSO justifies the invocation of Guideline F and Guideline E.

III. Regulatory Standards

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

²The Individual’s sole exhibit was an excel spreadsheet showing the calculations for his 2021 taxes. Ex. A.

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Findings of Fact and Hearing Testimony

In 2011, the Individual completed an eQIP form, where he stated that he had not filed taxes between 2004 and 2011 and that he had been “under the mistaken impression” that if he had no unreported income and over-withheld, he did not need to file his taxes.³ Ex. 7 at 36. This admission prompted further investigation, which was eventually resolved in 2011 when the Individual said that he was in the process of filing the missing tax returns and that he intended to file his taxes in the future. Ex. 8. at 1–3. At this time, an LSO official informed him as to the security concern raised by his failure to file taxes. Tr. at 11.

In the Individual’s 2022 eQIP, the Individual indicated that he had not filed state or federal taxes from 2014 to 2020. Ex. 5 at 31–34. This admission prompted a TESI in late February of 2022, in which the Individual told the investigator that he had not filed taxes for these years because he was withholding the maximum amount and that the IRS and his state would file his taxes using the standard deduction and send him a bill if he owed any money. Ex. 6 at 3. He also told the investigator that he was planning on selling a home he owned soon, and he would likely use a tax CPA in order to prepare his future tax returns and deal with capital gains he expected to incur. *Id.* He also stated that he intends to have the CPA file back taxes to the state and IRS as far back as is allowed. *Id.*

After completing the TESI, the LSO asked the Individual to fill out a Personnel Security Questionnaire at the end of April 2022 to provide further information. Ex. 3. In the questionnaire the Individual explained that he had not filed taxes from 2004 to 2010 because the IRS had “already billed [him]” for those years. *Id.* at 3. The Individual indicated that at the time he was filling out the questionnaire he did not have records regarding his 2014 to 2020 taxes. *Id.* at 5–6. He stated that although he had told the TESI investigator that he planned to hire a CPA to help him with his taxes, he had not done so at the time he completed the questionnaire. *Id.* at 7.

At the hearing, the Individual testified that when it was time to file his taxes for 2000, he realized his taxes were more complicated than they had been previously, so he filed for an extension. Tr. at 17. He said that he went to the IRS building shortly before his 2000 tax return was due, spoke with some IRS employees, and became concerned that if he filed his taxes incorrectly, he would be charged with perjury, but if he let the IRS do his taxes for him, there was no such risk. *Id.* He further explained that some years the IRS would send him a letter saying that he owed them money,

³ The Individual asserted that his understanding about the need to file taxes was confirmed by an IRS official in 2007. Tr. at 11.

and he would then send a check for that amount. *Id.* at 18. At the time of the hearing, he testified that he was unable to provide copies of these letters. *Id.*

The Individual also stated that he did not know the names of the individual who told him in the early 2000s that he did not have to file taxes, nor the IRS official who likewise informed him in 2007. *Id.* at 22.

The Individual testified that he was in the process of finding the documentation that he needed to file back taxes. *Id.* at 22. He also stated that he had not hired a CPA like he had said he would in the TESI because of “procrastination.” *Id.* at 23, 25. He said that it was his intention to file his taxes on time from now on. *Id.* at 32.

V. Analysis

The adjudicative process is “an examination of a sufficient period and a careful weighing of a number of variables of an individual’s life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.” Adjudicative Guidelines, Appendix A at ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a national security eligibility determination. *Id.* Each case must be judged on its own merits. *Id.* at ¶ 2(b).

The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline F if:

- (a) The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (b) The conditions that resulted in the financial problem were largely beyond the person's control (*e.g.*, loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) The individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) The individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) The individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

- (f) The affluence resulted from a legal source of income; and
- (g) The individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Adjudicative Guidelines at ¶ 20.

After considering the record in this case, I find that the Individual has not mitigated the stated Guideline F concerns in this case. There is no allegation here that the Individual's unfiled taxes were related to financial issues, debts, or a sudden affluence, and, thus, mitigating factors (b), (d), (e), and (f) do not apply. Mitigating factor (a) cannot be applied here because the Individual's failure to file his state and federal taxes has occurred repeatedly over a period of approximately 20 years. While the Individual said he would seek out the services of a CPA in order to resolve his concerns about his taxes, he has failed to do so in the period of almost a year between his TESI and the hearing, and, therefore, mitigating factor (c) does not apply. Additionally, while the Individual testified that he intends to arrange with the appropriate tax authorities to file his taxes and pay any amount that may be due to state or federal authorities, he had not taken steps to do that at the time of the hearing. As such, mitigating factor (g) does not apply here. The Individual's failure to file tax returns or determine if he has a tax debt raises significant concerns about his judgment and reliability. Consequently, given the record before me, I cannot find that the Guideline F security concerns have been resolved.

The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline E if:

- (a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) The information was unsubstantiated or from a source of questionable reliability; and

(g) Association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

I find that the Individual has not mitigated the Guideline E concerns in this case. Mitigating factors (f) and (g) are not relevant to the allegations in this case. Mitigating factor (a) is not relevant since the Individual, despite informing LSO officials in 2011 that he intended to file his tax returns in a timely manner did not do so and did not address this issue until being recently being confronted by the LSO. The Individual alleged that he continued to not file his taxes because he was instructed by an IRS employee in 2007 that he did not need to. However, the Individual was not able to offer any corroboration for this assertion, and so, mitigating factor (b) does not apply. This behavior has occurred with such frequency that it cannot be mitigated under mitigating factor (c). At the time of the hearing, the Individual had not obtained any counseling or taken any other positive steps to reduce or eliminate the vulnerabilities he created by not filing his taxes; therefore, mitigating factors (d) and (e) do not apply here. The Individual's failure to file tax returns after LSO expressed its concern in 2011 shows questionable judgment. Accordingly, after reviewing the record in this matter, I find that the Individual has not mitigated the security concerns raised by the Guideline E derogatory information.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline F and Guideline E of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, the Individual has demonstrated that restoring his security clearance would endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's security clearance should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals